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IN THE

Supreme Court of the United States

October Term, 1969
No. 991

UNITED STATES OF AMERICA,
Plaintiff and Appellee,

vs.

EDWARD M. CLARIDGE and KAY T. CLARIDGE, his wife, *et al.*, and STATE OF ARIZONA, *ex rel.*, OBED M. LASSEN,
Defendants and Appellants.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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Defendants and Appellants.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioners, Edward M. Claridge and Kay T. Claridge respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on September 19, 1969.

Opinions Reported.

The opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto. The opinion of the District Court for the District of Arizona, reported in 279 F. Supp. at 91, also appears in the Appendix hereto.

Jurisdiction.

The judgment of the Court of Appeals for the Ninth Circuit was entered on September 19, 1969. No pe-

tition for rehearing was filed and this petition was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

Questions Presented.

1. Does the bed of a navigable stream include the area over which the waters of the river flow during the normal annual high flow period of the river, although that high flow lasts only six (6) to ten (10) weeks each year?

2. Was the change in the flow pattern of the Colorado River sufficiently within the specific purposes of the Boulder Canyon Project Act so as to prevent the United States from claiming subject lands from Arizona under the doctrine of accretion?

3. Did the construction of Hoover Dam result in avulsive changes on the Colorado River below the dam?

Statement of the Case.

This is an action instituted by the United States for restraining orders, to quiet title, for ejectment from the subject lands and for damages for past use and occupancy of subject lands by petitioners. The jurisdiction of the District Court was invoked under 28 U.S.C. § 1345.

The lands involved are located two miles south of Ehrenberg, Arizona, on the Arizona side of the Colorado River. Petitioners have occupied their land for many years prior to the filing of this action and have improved the land by clearing and leveling it, establishing an irrigation system and building fences and other improvements. They paid for the land and re-

ceived a quitclaim deed from the prior occupier whose title traces through prior occupiers, but not to an original grant from the State of Arizona or the United States.

After the commencement of the action, the State of Arizona signed a lease with petitioners covering subject lands and, upon proper application, was permitted to intervene in the action.

The case was tried before the District Court which entered its Findings of Fact, Conclusions of Law and Judgment holding that title to the subject lands is in the United States, free and clear of any right, title, interest, claim or demand of the defendants or intervenors. This judgment was affirmed by the Circuit Court.

All of the parties agree that Arizona took the eastern half of the bed of the Colorado River in this reach, from the thread to the eastern ordinary high water mark, when it entered the Union in 1912.

The subject lands lie entirely within the area covered by the usual annual high flow of the Colorado River, a nontidal, navigable stream as it flowed prior to the closing of the flood gates of Hoover Dam in 1933. Since the closing of Hoover Dam, the United States admits that the Colorado River has been little more than a canal, controlled by the United States and moved by the United States as it chooses. Subject land borders the present flow channel of the Colorado River in part and in part, it lies several hundred yards to the east of the present channel.

The subject land now lies outside the flow channel of the Colorado River as a result of the regulation of the River by Hoover Dam and other river control activities of the United States.

REASONS FOR GRANTING THE WRIT.

1. The Decision Below Conflicts With Decisions of the Supreme Court of the United States Defining the Bed of a Navigable River as That Definition Applies to the Colorado River in This Case.

Oklahoma v. Texas, 260 U.S. 606, 635 (1923); *Alabama v. Georgia,* 64 U.S. (23 How.) 505, 515 (1859); *Howard v. Ingersoll,* 54 U.S. (13 How.) 380, 415 (1851).

The Circuit Court (page 2 of the Appendix hereto) summarily characterized petitioners' definition of ordinary high water mark as based on the theory that the annual spring floods of the river covered the valley from bluff to bluff and therefore, that the valley, from bluff to bluff, was the river bed. In fact, such bluff to bluff floods occurred but rarely, and the Circuit Court properly rejected any such definition. But the Court did not go on to apply the rule of the cited cases to the fact situation in this case.

Petitioners contend that the bed of the Colorado River between ordinary high water on each bank was the area which supported the normal annual high flow of the river for a period lasting from six (6) to ten (10) weeks every year. It did not spread out over the whole valley but, in the area of subject lands, was a clearly definable area about a mile wide each year. The cases cited by the Circuit Court, while they rightly reject the bluff to bluff flood concept, do support petitioners' position that the bed of the river includes the usual annual high flow of the river.

In *Howard v. Ingersoll, supra,* the Supreme Court said:

> "When banks or rivers were spoken of those boundaries were meant to contain their waters at the highest flow, and in that condition they make what is called the bed of the river. (Emphasis added.)
>
> The call is for the bank, the fast land which confines the water of the river in its channel of bed in its whole width . . . the bank or slope from the bluff or perpendicular of the bank may not be reached by the water for two-thirds of the year, still the water line impressed on the slope is the line required by the commissioner; and the shore of the river, though left dry for any time and but occasionally covered by water in any stage of it to the bank was retained by Georgia as the river up to that line."

A few years later, the Supreme Court in *Alabama v. Georgia,* 64 U.S. (23 How.) 505 at 515, 16 L. Ed. 556, stated,

> "The bed of the river is that portion of soil which is alternately covered and left bare as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average and mean stage during the entire year without reference to the extraordinary freshets of the winter or spring or the extreme drought of the summer or autumn."

The Court also said,

> "Banks of a river contain the river in its natural channel where there is the greatest flow of water."

Uncontested evidence at the trial showed that the annual high flow period of the Colorado was a regular, normal part of the flow pattern of the river and was not a freshet or spring flood.

In *Oklahoma v. Texas, supra,* the Court specifically declares that, ". . . the banks of a river are neither the hargis or bluffs which mark the extreme limits of the valley nor the low shifting elevators within the sand bed . . ." and then quotes and follows *Howard v. Ingersoll, supra.*

Subject land was within the area which regularly supported the flow of the Colorado River each year prior to Hoover Dam and was a part of the river bed under the rule of *Howard v. Ingersoll.*

2. The Circuit Court Ignored the Stated Purposes for Construction of Hoover Dam in Ruling That It Is of No Significance Whether Hoover Dam Affected the Course of the River.

The Boulder Canyon Project Act, 67 U.S. Stat. 29, 43 U.S.C. § 617,[1] was enacted by Congress in part for

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[1]SUBCHAPTER I.—BOULDER CANYON PROJECT ACT.

§617. Colorado River Basin; protection and development; dam, reservoir, and incidental works; water, water power, and electrical energy; eminent domain.

For the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River compact hereinafter mentioned in this chapter, is hereby authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir of a capacity of not

the purpose of "controlling floods, improving navigation and regulating the flow of the Colorado River . . ." Pursuant to this Act, Hoover Dam was constructed for the purpose of retaining waters of the river and releasing them in a controlled manner so as to prevent the annual high waters from flowing over the lands at the edges of the bed of the Colorado River, including subject lands. To deny this as a primary purpose of the Act is to deny the meaning of the very words of the Act. If legal consequences in terms of changing title to land follow a change in the ordinary high water mark which defines ownership of the land, then it is sheer folly to say that he who intends to change the water line does not intend to change the ownership.

Yet, the Circuit Court arrives at precisely this conclusion. The decision below cites *Beaver v. United States,* 350 F. 2d 4, 11 (Ninth Cir. 1965) cert. denied 383 U.S. 937 (1966) for the proposition that:

> "The erecting of artificial structures does not alter the application of the accretion doctrine . . . unless, perhaps, structures are erected for the specific purpose of causing the accretion,"

and then states (page 3 of the Appendix hereto):

> "Whether Hoover Dam affected the course of the river is of no significance, for it . . . was not constructed for the purpose of reducing river bed holdings."

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less than twenty million acre-feet of water and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary of the Interior is hereby authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, * * * etc. Dec. 21, 1928, c. 42, §1, 45 Stat. 1057.

The result of allowing the decision of the Circuit Court to stand would be to endorse the rule that wherever the United States owns land riparian to a navigable stream, it may go upstream, build a flood control project, and acquire title to the downstream land it dries up.

3. The Circuit Court Ignored the Facts Presented in the Record When It Held That Changes in the River Resulting From Hoover Dam Were Not Avulsive.

The Circuit Court held that "whether Hoover Dam affected the course of the river is of no significance, for it did not result in avulsive changes." (See page 3 of Appendix hereto). Without belaboring the point as to details, the transcript of the trial court proceedings is replete with evidence that the changes in the Colorado River resulting from the closing of Hoover Dam were sudden and dramatic, not gradual and imperceptible. Overnight the river became little more than a conveyance canal compressed into a definite channel of reduced width. These were clearly avulsive, not accretive changes. 65 C.J.S., Navigable Waters, § 81; 56 Am. Jur., Waters, § 476. *Philadelphia Co. v. Stimsen,* 223 U.S. 605 at 624.

4. The Decision Below Is of Critical Importance to the Lives of Residents of the Colorado River Valley From Hoover Dam to the Mexican Border and to the State of Arizona.

Between 200,000 and 300,000 acres of land lie in the area that was within the bed of the Colorado River prior to the establishment of man made controls. Arizona claims that part of the land on the eastern side of

the present flow channel and her stake in this decision is enormous. Thousands of persons face loss of their homes, their farms, their businesses, their very livelihoods, if the United States can go upstream, close off the flow of water in the river, and then, after thirty (30) years come to the settler and the State of Arizona and summarily throw them out.

Conclusion.

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

December 16, 1969.

Respectfully submitted,

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APPENDIX.

Opinion of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals, for the Ninth Circuit.

United States of America, Plaintiff-Appellee, vs. Edward M. Claridge and Kay T. Claridge, his wife, et al. and State of Arizona, Ex Rel., Obed M. Lassen, Defendants-Appellants. No. 22,312.

Filed, Sept. 19, 1969.

On Appeal from the United States District Court for the District of Arizona.

Before: MERRILL and ELY, Circuit Judges, and KILKENNY, District Judge.*

Per Curiam:

This action was instituted by the United States to quiet title to lands located on the Arizona side of the Colorado River in the Palo Verde Valley. Judgment of the District Court was rendered in favor of the United States. 279 F.Supp. 87 (D.Ariz. 1967). From the judgment the defendants and the State of Arizona, as intervenor, have appealed. They assert that the lands in question are not in the public domain but that title thereto passed to the State of Arizona upon its becoming a state in 1912. They contend that at that time the lands were in the bed of the Colorado River[1] and

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*Honorable John F. Kilkenny, United States District Judge for the District of Oregon, sitting by designation.

[1]Confirming prior case law, the Submerged Lands Act of 1953, 67 Stat. 29, 43 U.S.C. §1301(a)(1), in effect quitclaims

(This footnote is continued on the next page)

remained there until the construction of Hoover Dam in 1935 reduced the width of the river.

The facts are fully stated in the opinion of the District Court. For the purposes of this appeal it is sufficient to state that appellants' theory is founded on the mistaken assumption that the annual spring floods of the river (suffered prior to the advent of Hoover Dam), which covered the valley from bluff to bluff, constituted its "ordinary high water" and that the valley, from bluff to bluff, thus constituted the bed of the river. By eliminating these floods, appellants contend, the Hoover Dam caused an avulsive change in the flow of the river so that the United States as riparian owner did not take title to the flood plain.

Appellants' definition of "ordinary high water mark" is unsound. The District Court concluded, and we agree:

> "The ordinary high water mark of a river is a natural physical characteristic placed upon the lands by the action of the river. It is placed there, as the name implies, from the ordinary flow of the river and does not extend to the peak flow or flood stage so as to include overflow on the flood plain, nor is it confined to the lowest stages of the river flow." 279 F.Supp. at 91.

This is in accord with holdings of the Supreme Court. *Oklahoma v. Texas,* 260 U.S. 606, 635 (1923); *Alabama v. Georgia,* 64 U.S. (23 How.) 505, 515 (1859); *Howard v. Ingersoll,* 54 U.S. (13 How.) 380, 415 (1851).

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to the states "* * * all lands * * * covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, * * * up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction * * *."

The District Court was therefore not in error in ruling that a precise location of the high water mark at the time of Arizona's statehood was unnecessary. While the river unquestionably has meandered through the valley since that time, any change in its course has resulted from gradual erosion and not from avulsion, and the resulting accretion passes to the United States as riparian owner. Whether the Hoover Dam affected the course of the river is of no significance, for it did not result in avulsive changes and it was not constructed for the purpose of reducing riverbed holdings. 43 U.S.C. §617. As this court stated in *Beaver v. United States,* 350 F.2d 4, 11 (9th Cir. 1965), *cert. denied,* 383 U.S. 937 (1966):

> "The erecting of artificial structures does not alter the application of the accretion doctrine * * * unless, perhaps, structures are erected for the specific purpose of causing the accretion."

For the reasons set forth in the opinion of the District Court, judgment is affirmed.

Findings of Fact, Conclusions of Law and Judgment.

In the United States District Court, For the District of Arizona.

United States of America, Plaintiff, vs. Edward M. Claridge, et al., Defendants. State of Arizona, ex rel. Obed M. Lassen, Intervenor. No. Civ-5080-Phx.

The within action was instituted by the United States for the purpose of quieting title to certain land hereinafter described, to evict the defendant occupants of the land, and for damages claimed to have resulted from the use and occupancy of the land by the defendant

occupants. The land in controversy is described as follows:

> The South Half of the Southwest Quarter (S½-SW¼) of Section 22; all of Section 27; The South Half of the Southeast Quarter of the Northeast Quarter (S½SE¼NE¼) of Section 28; and that part of Lot Three (3) lying West of the South Half of the Southeast Quarter of the Northeast Quarter (S½SE¼NE¼) of Section 28, Township Three North, Range Twenty-two West, G&SRB&M, Yuma County, Arizona.

The defendant occupants of the land deny the title of the United States and assert title to be in the State of Arizona, and that they, the defendant occupants, are properly in possession by virtue of certain leases executed by the State of Arizona. The defendant occupants also by way of set off and counterclaim assert that they have suffered damages in the loss of a barley crop and the destruction of certain improvements caused by the plaintiff in interferring with their occupancy.

The State of Arizona, intervenor, asserts title to the land upon the theory that the land in question is in fact located between the thread of the Colorado River and the easterly ordinary high water mark of the river, and since the admission to statehood in 1912, the State of Arizona has owned the land in question, and its title thereto has been confirmed by virtue of the Submerged Lands Act, 67 Stat. 29; 43 USC 1301, et seq.

The defendant occupants prior to entering into the leases with the State of Arizona (which leases were executed subsequent to the commencement of this action), asserted their title to possession by virtue of a

quit-claim deed from certain predecessors in interest, for which they had paid a substantial sum, and a land use permit acquired in 1963 from the United States Lower Colorado River Land Use Office, for which they had paid the sum of $2622.00.

The land in question is located in the Palo Verde Valley within the State of Arizona on the easterly side of the present channel of the Colorado River, approximately one and one-half miles south of Ehrenburg, Arizona. A portion of the land in question constituting a "corridor" through Section 28 abuts upon the easterly bank of the present river channel. Except for this area, the westerly border of the land in question is situated approximately one-fourth of a mile east of the present easterly bank of the river channel.

The Palo Verde Valley through which the Colorado River flows is a part of the overall natural basin of the Colorado River. The Valley is approximately fifteen miles in length from North to South, and at the point in question is approximately eight miles in width from East to West. The river flows generally in a northerly to southerly direction. The city of Blythe, California, is located in the Valley to the West of the River and the town of Ehrenburg, Arizona, is located in the Valley to the East of the River. The floor of the Valley is an alluvial plain which has obviously resulted from the deposit of alluvion by the Colorado River as it meandered across the Valley from one side to the other, and from the erosion of the bluff on the California side and the erosion of the bluff on the Arizona side. The westerly limit of the Valley is bounded by the California bluff; the easterly limit is bounded by the Arizona bluff.

The territory of which the land in question is a part was acquired by the United States under the Treaty of Guadalupe Hidalgo. 9 U.S. Stat. 922.[1]

The Colorado River at the point in question is a navigable stream (*Arizona v. Calif.* 283 U.S. 423; *U. S. v. Appalachian Elec. Power Co.* 311 U.S. 377; *Boulder Canyon Project Act,* 67 U.S. Stat. 29), and the State of Arizona holds title to land underlying the River from the thread of the stream to the easterly ordinary high water mark. (43 U.S.C. 1301, et seq., 67 Stat. 29; *Arizona v. Calif.,* 283 U.S. 423).[2]

Historically and prehistorically, the Colorado River has been, at its peak flow, a turbulent and violent river, carrying enormous quantities of water, and with the the ages the deposit of the silt and alluvion by the water, great quantities of silt and alluvion. Over river has resulted in the construction of the alluvial plain which constitutes the floor of the Valley. Since 1874, when attempts to measure the seasonal flow of the river and surveys were undertaken to establish its location, the meanderings of the river have been generally confined to the easterly side of the Valley, along the Arizona side or bluff.

By orders issued January 31, 1903 and February 19, 1929, pursuant to Act of Congress dated June 17, 1902 (32 Stat. 388), all public lands lying within six miles of the Colorado River east of the ordinary high water mark were withdrawn from settlement, entry

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[1]Concluded February 2, 1848; Ratification exchanged at Queretaro, Mexico, May 30, 1848; Proclaimed July 4, 1848.

[2]See also the "Equal Footing Doctrine", *Pollard's Lessee v. Hogan,* 3 How. 212; *Shively v. Bowlby,* 152 U.S. 1; *Kansas v. Colorado,* 206 U.S. 46; and 37 U.S. Stat. 39; 37 U.S Stat. 1738.

or other disposition. Included in the withdrawal orders was that portion of the South Half (S½) of Township Three (3) North, Range Twenty-two (22) West, G.&S. R.B.&M., Yuma County, Arizona, lying east of the ordinary high water mark of the River. The land in question is included in the latter description, unless it lies within the bed of the river between the easterly ordinary high water mark and the thread of the river to the west. The easterly border of the land in question is adjacent to federally owned land to the east.

A great amount of evidence was introduced for the purpose of showing the movements of the river from 1874 to 1964.

From 1874 to 1903, the river moved from a location considerably west of the lands in question to a position where it covered the "corridor" of these lands and a portion of the northwest area of the lands.

By 1912, at the time Arizona was admitted to statehood, the river had moved slightly more to the east toward the Arizona bluff.

Between 1911 and 1915, a levee was constructed along the westerly side of the flood plain of the river to protect agricultural land lying to the west of the river. During this period the "Rabb cut-off" was constructed, resulting in a partial avulsive movement of the river, which did not materially affect the lands in question. By 1915, however, the river had continued its easterly movement so that the normal flow of the river ran to the west of, but near the center of, the lands in question.

By 1922, a loop which had been forming to the north and west of the land in question had moved

south and the river began to move westerly again, so that it covered the "corridor" and the southwest corner area of the land in question. By 1924, the loop had moved further south and the southeasterly extremity of the loop had moved easterly over the central portion of the lands, and the river continued to cover the "corridor"; it then flowed directly south through the center of the lands. As a result of the summer floods of 1924, the river had cut through the loop and the channel returned to approximately the same position it held in 1915. By 1930, the loop had reformed to the west and the river again cut back easterly into the lands in question so that it almost covered the southwest quadrant of the land.

The Boulder Canyon Project Act was passed by Congress in 1928, and among other things authorized the construction of a dam upstream from the land in question at Black Canyon or Boulder Canyon. There were several reasons for the construction of the dam, none of which was for the purpose of establishing the lands in question by avulsion. 43 USC 617.[3] As

[3]SUBCHAPTER I.—BOULDER CANYON PROJECT ACT.

§617. Colorado River Basin; protection and development; dam, reservoir, and incidental works; water, water power, and electrical energy; eminent domain.

For the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River compact hereinafter mentioned in this chapter, is hereby authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder

a result of the Boulder Canyon Project Act, Hoover Dam was constructed. Its gates were closed and the dam became operative in 1935. Since that time until the present, the river channel has become relatively stabilized so that it flows adjacent to the westerly limits of the "corridor" of the lands in question and from one-half to one-quarter of a mile west of the lands other than the "corridor".

While it is possible to view the area in question and to generally determine the historical movements of the river there are little, if any, physical characteristics from which one might determine the classical "ordinary high water mark" of the river as it existed prior to 1935, nor is it in the opinion of the Court necessary to make such a determination to resolve the issues of this case.

The Court has considered the evidence in this case, the memoranda of the respective parties, and the arguments in support thereof. Being fully advised in the premises, the Court finds as follows:

FINDINGS OF FACT

1. It is immaterial to determine the location of the ordinary high water mark of the river in 1912 or subsequent dates, other than the date at which defendants claim title or right to possession.

Canyon adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary of the Interior is hereby authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, * * * etc. Dec. 21, 1928, c. 42, §1, 45 Stat. 1057.

2. The present ordinary high water mark of the river exists by virtue of the controlled flow of the river through Hoover Dam and other dams upstream from the lands in question.

3. The lands in question are located to the east of the present ordinary high water mark of the Colorado River.

4. The lands in question were withdrawn from entry by the withdrawal orders of January 13, 1903 and February 19, 1929, issued pursuant to Act of Congress dated 17 June 1902, 32 Stat. 388.

5. The present ordinary high water mark of the Colorado River so far as it relates to the lands in question is within the existing banks of the river, the easterly such bank lying to the west of the most westerly limits of the land in question.

6. No part of the lands in question lie within the bed of the Colorado River from the thread of the river to its easterly bank, or otherwise.

CONCLUSIONS OF LAW

1. The ordinary high water mark of a river is a natural physical characteristic placed upon the lands by the action of the river. It is placed there, as the name implies, from the ordinary flow of the river and does not extend to the peak flow or flood stage so as to include overflow on the flood plain, nor is it confined to the lowest stages of the river flow.[4]

2. The ordinary high water mark of the Colorado River at the location in question is within the existing

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[4] *U.S. v. Chicago, B. & Q.R. Co.*, 90 F.2d 161; *Ohle v. Texas*, 260 U.S. 606, 43 S.Ct. 221; See also *Beaver v. U.S.*, 350 F.2d 4.

banks of the river to the west of the lands in question, regardless of the activity by the United States in constructing certain works within the river to confine and improve the channel, which work has been undertaken within the purview of the Boulder Canyon Project Act. 43 USC §617, et seq.

3. The lands in question were established by accretion or reliction from the action of the Colorado River, or by both, and were accreted to or relicted to lands owned of the United States, withdrawn from entry by lawful action of the United States in 1903 and 1929; the title thereto is presently in the United States.[5]

4. The United States could not lose title to the lands in question by estoppel, mistake, laches, adverse possession or acquiescense.[6]

5. The defendants and intervenor have no right, title, interest, claim or demand to the lands in question.

6. If any finding of fact herein involves matters of both fact and law, to the extent that any such finding of fact may be construed more properly as a conclusion of law, the same is hereby adopted and incorporated herein as a conclusion of law.

This Court having decided the case upon the merits, plaintiff's motion for partial summary judgment heretofore taken under advisement is denied.

The Court will retain jurisdiction in the matter for the purpose of determining damages due plaintiff, if

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[5]*U.S. v. Oregon*, 295 U.S. 1; *U.S. v. Washington*, 294 F.2d 830, cert. den. 369 U.S. 817; *Beaver v. U.S.*, 350 F.2d 4.

[6]Art. IV, Section 3, Constitution; *U.S. v. California*, 332 U.S. 19; *Beaver v. U.S.*, 350 F.2d 4; See *Wilson & Co. v. U.S.*, 245 U.S. 24; *Utah Power & Light Co. v. U.S.*, 243 U.S. 389; *U. S. v. Langendorf*, 322 F.2d 25.

any, upon appropriate presentation of evidence on that subject.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that title to the lands in question and described as:

> The South Half of the Southwest Quarter (S½SW¼) of Section 22; all of Section 27; the South Half of the Southeast Quarter of the Northeast Quarter (S½SE¼NE¼) of Section 28; and that part of Lot Three (3) lying West of the South Half of the Southeast Quarter of the Northeast Quarter (S½SE¼NE¼) of Section 28, Township Three North, Range Twenty-two West, G&SRB&M, Yuma County, Arizona,

is in the United States of America, free and clear of any right, title, interest, claim or demand of defendants or intervenor.

Dated at Phoenix, Arizona, this 4th day of November, 1966.

/s/ Walter E. Craig
Walter E. Craig
United States District Judge

I, WM. H. LOVELESS, Clerk of the United States District Court in and for the District of Arizona, do hereby certify that the annexed and foregoing is a true and full copy of the original thereof now remaining in my custody among the records of the said court.

Attest Oct. 3, 1967, Wm. H. Loveless, Clerk, United States District Court for the District of Arizona. By Winona Andre, Deputy Clerk.